

R E M A R K S

Claim 1 has been amended to define further and more fully certain novel and distinguishing features of the invention, and withdrawn dependent claim 7 has been canceled because it is excluded from the scope of claim 1 by the limitation herein added to claim 1. Amended claim 1 remains generic to the elected species and subspecies of the invention. Since this Amendment does not increase either the total number of claims or the number of independent claims, no additional fee is necessary.

Claims 1 (independent) and 2 - 6, 8 - 10, 18 - 21, 29 and 30 (all dependent on 1) are in the application. Of these, claims 4, 6 and 8 have been withdrawn from consideration pursuant to an election of species, and claims 1 - 3, 5, 18 - 21, 29 and 30 have been rejected as anticipated by or unpatentable over the cited art. No claim has been allowed, but claims 9 and 10 have been indicated to be allowable if rewritten in independent form including all the limitations of the claim or claims on which they depend.

In response to the rejection of claim 1 under 35 U.S.C. §102(b) as anticipated by Sarica, the claim has been further amended to specify that the "long axis" is the geometrical long axis of the container and to recite that the cover and the receptacle are relatively rotatable about or relatively slidable along that long geometrical axis to open and close the receptacle. "Relatively rotatable" means that one of the cover and the receptacle rotates relative to the other; "relatively slidable" means that one slides relative to the other. These recitals are supported by the disclosure of the elected species of FIGS. 9-11 (specification, p. 14, lines 4-6, the long axis of the cylindrical housing member being the long geometrical axis, cf. p. 16, line 17), as well as by the disclosure of the nonelected slidable species, e.g. the species shown in FIGS. 1-5.

The device of Sarica has a rectangular container constituted of top and bottom components hinged along one long edge. This container is divided into a first compartment and a second compartment by a transverse wall having portions formed in each of the two components. The first compartment is a receptacle for cosmetics or the like; the second compartment holds an applicator and has an open end through which the applicator handle extends. In closed position, the two components are held together by a friction catch; twisting of the applicator handle exerts a force releasing the catch, and the two components separate by pivoting about the hinge, opening both compartments laterally.

The Sarica container is essentially a hinged compact that incorporates an applicator. Because the two components separate by pivoting on an elongated hinge, the device (like any such compact) effectively undergoes significant lateral expansion on opening, largely increasing the lateral dimensions of the volume of space it occupies.

In applicants' dispenser as defined in amended claim 1, in contrast, opening of the receptacle involves no lateral expansion of the volume occupied, because the receptacle and cover merely undergo relative rotation about, or relative sliding movement along, the long geometric axis of the container, rather than separating by pivoting about a hinge at one edge.¹ This minimization of occupied lateral volume can be advantageous in particular environments of use; moreover, the operation of the claimed device, by a user, is intriguingly different from that of a conventional compact (to which the Sarica device corresponds), offering the consumer appeal of novelty as well as manipulative convenience.

¹It will be noted that the device shown in applicants' FIGS. 12-15 is excluded from the scope of amended claim 1.

Clearly, amended claim 1 is not anticipated by Sarica, because Sarica does not disclose any container with a cover and a receptacle that are relatively rotatable about or relatively slidable along the long geometrical axis of the container to open and close the receptacle. The hinge about which the two components pivot is remote from the geometric axis of the Sarica container.

Moreover, there is nothing in Sarica to suggest or make obvious any such modification of the only structural arrangement taught by the patent, viz. a long edge hinge about which the two halves of the container pivot to separate when the container opens. The feature emphasized in the patent is the opening of the container by twisting of the applicator handle to forcibly release the friction catch and pivot the two halves of the container apart on the hinge. This is a completely different mechanism, and operation, from the relative rotation of receptacle and container about, or relative sliding movement along, the geometric axis of the container.

Therefore it is submitted that the recital of the latter features in amended claim 1 presents a patentable distinction over Sarica, and that the other rejected claims likewise distinguish patentably over Sarica, by virtue of their dependence on claim 1. The secondary references applied against certain of the dependent claims do not supply what is lacking in Sarica with respect to the distinguishing features of amended claim 1.

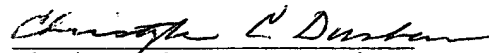
Further, it is believed that the objection to claims 9 and 10 as dependent on a rejected claim is similarly overcome by the allowability of claim 1. Accordingly, it is unnecessary to rewrite claims 9 and 10 in independent form.

In view of the allowability of amended claim 1, which is generic to the species of withdrawn claims 4, 6 and 8 as well as

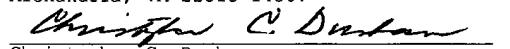
to the elected species, it is submitted that the withdrawn claims should be considered on the merits, and allowed.

For the foregoing reasons it is believed that this Amendment will place the application in condition for immediate allowance. Entry of the Amendment, and favorable action, are accordingly courteously requested.

Respectfully,


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I hereby certify that this paper is being deposited this date with the U.S. Postal Service as first class mail addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


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